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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19~~43~~44

No. 81~~2~~3

THE UNITED STATES OF AMERICA, APPELLANT

vs.

MARGARET M. JOHNSON AND MARY E. LAYTON, DOING BUSINESS AS THE UNITED STATES DENTAL COMPANY, AND VOYLE CLARK JOHNSON

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE

FILED MARCH 23, 1944

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 811

THE UNITED STATES OF AMERICA, APPELLANT

vs.

MARGARET M. JOHNSON AND MARY E. LAYTON, DOING BUSINESS AS THE UNITED STATES DENTAL COMPANY, AND VOYLE CLARK JOHNSON

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE

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560908—44——1

1 In the District Court of the United States
for the District of Delaware

Criminal Action No. 407

UNITED STATES OF AMERICA

vs.

MARGARET M. JOHNSON AND MARY R. LAYTON, DOING BUSINESS AS THE UNITED STATES DENTAL COMPANY, AND VOYLE CLARK JOHNSON

Docket entries

1944

1. Jan. 26—Criminal Information, with affidavit of Stewart Lynch, filed.
2. Jan. 26—U. S. Atty. Lynch moves for Bench Warrants; same day order of Court that Warrants issue and that defendants be held in bail of $1,000.00.
   Jan. 26—Bench Warrants issued (exit papers to Marshal).
3. Feb. 1—Appearance of H. Albert Young and Alexander Jamison as Counsel for the defendants, filed.
4. Feb. 1—Demurrer, Motion to Quash and plea in Abatement on behalf of all defendants, filed.
   Feb. 2—Hearing on defendants' Motions to Quash, etc.
4A. Feb. 2—Order of Court granting Motion of defendants to Quash, etc., filed.
5-7.6-Feb. 8—Marshal returns on Bench Warrants, Non Est.
8. Mar. 3—Government's petition for Appeal, filed.
9. Mar. 3—Government's Statement as to Jurisdiction under Rule 12 of Supreme Ct. of U. S., filed.
10. Mar. 3—Government's Assignment of Errors, filed.
11. Mar. 3—Order of Court allowing Appeal, filed.
12. Mar. 3—Citation on Appeal and Notice of Service on Appellees, filed.
13. Mar. 3—Designation for Transcript of Record by Appellant, filed.

2 In United States District Court

[Title omitted.]

Excerpts from Minutes of February 2, 1944

PRESENT

Hon. PAUL LEAHY, U. S. District Judge.

APPEARANCES

Stewart Lynch, Esq., United States Attorney; H. Albert Young, Esq., attorney for defendants.

SUBJECT

Hearing on defendants' motion to quash, etc.

ARGUMENT

Mr. Young for the motion. Mr. Lynch against the motion.

The Court stated an order should be submitted in conformity with the Court's opinion in Criminal Action No. 296.

3 In United States District Court

Criminal information

Filed Jan. 26, 1944

STATE AND DISTRICT OF DELAWARE, *ss:*

Stewart Lynch, United States Attorney in and for the District of Delaware, who, for the said United States in this behalf prosecutes, in his own proper person comes into Court on this 26th day of January A. D. 1944, and with leave of the Court first had and obtained, gives the Court here to be informed that heretofore, to wit, on or about the 25th day of August 1943, the defendants, Margaret M. Johnson and Mary E. Layton, doing business as the Unted States Dental Company and Voyle Clark Johnson, hereinafter referred to as defendants, in the course of the conduct of a business of constructing or supplying dentures from casts or impressions sent through the mails or in Interstate Commerce, did use the United States Mails for the purpose of sending a set of dentures from the State of Illinois into the State of Delaware, the laws of which State prohibit the taking of impressions or casts of the human mouth by a person not licensed under the laws of the

State of Delaware to practice dentistry and likewise prohibits the construction or supply of dentures by a person other than or without the authorization or prescription of, a person licensed under the laws of said State to practice dentistry and also prohibits the construction or supply of dentures from impressions or casts made by a person not licensed under the laws of the State of Delaware to practice dentistry (Revised Code of Delaware, 1935, Chapter 30, Sections 23 and 26), that is to say, the said defendants, on the day first aforementioned, did deposit at the Wicker Park Station, a branch of the United States Post Office at Chicago, Illinois, for delivery to Alice Harris, R. F. D. #1, Box 20,
4 Houston, Delaware, and within the jurisdiction of this Insured Parcel No. 6169824, containing a set of dentures made or constructed from an impression taken by a person, viz, the said Alice Harris, she not being a person licensed under the laws of the State of Delaware to practice dentistry, the said set of dentures so mailed by the defendants as aforesaid, not being constructed by or under the authorization of or pursuant to a prescription of a person licensed under the laws of the said State of Delaware to practice dentistry, contrary to the form of the Statute (Act of December 24, 1942, C. 823, Sec. 1, 56 Stat. 1087, Title 18 U. S. C. A., Sec. 420f) in such cases made and provided, and against the peace and dignity of the United States of America

COUNT II

That on or about the 25th day of August 1943, the defendants, Margaret M. Johnson and Mary E. Layton, doing business as the United States Dental Company, and Voyle Clark Johnson, hereinafter referred to as defendants, in the course of the conduct of a business of constructing or supplying dentures from casts or impressions sent through the mails or in Interstate Commerce, did use the United States Mails for the purpose of sending a set of dentures from the State of Illinois into the State of Delaware, the laws of which state prohibit the taking of impressions or casts of the human mouth by a person not licensed under the laws of the State of Delaware to practice dentistry and likewise prohibits the construction or supply of dentures by a person other than, or without the authorization or prescription of, a person licensed under the laws of said State to practice dentistry and also prohibits the construction or supply of dentures from impressions or casts made by a person not licensed under the laws of the State of Delaware to practice dentistry (Revised Code of Delaware, 1935, Chapter 30, Sections 23 and 26), that is to say, the said defendants on the day first aforementioned, did deposit at the Wicker Park Station, a branch of the United States Post Office at Chicago,

Illinois, for delivery to Alice Harris, R. F. D. #1, Box 20, Houston, Delaware, and within the jurisdiction of this Court, Insured Parcel No. 6169824, containing a set of dentures, which insured parcel No. 6169824, so mailed as aforesaid was then transmitted in due course by the Post Office Establishment of the United States to and into the State of Delaware, to wit, to and at Houston, Delaware, and within the jurisdiction of this Court, the aforementioned set of dentures contained in the aforedescribed insured parcel having been made or constructed from an impression taken by a person, viz, the said Alice Harris, she not being a person licensed under the laws of the State of Delaware to practice dentistry, the said set of dentures so mailed by the defendants, as aforesaid, not being constructed by or under the authorization of or pursuant to a prescription of a person licensed under the laws of the said State of Delaware to practice dentistry, contrary to the form of the Statute (Act of December 21, 1942, C. 823, Sec. 1, 56 Stat. 1087, Title 18 U. S. C. A., Sec. 420f) in such cases made and provided, and against the peace and dignity of the United States of America.

5

COUNT III

That on or about the 25th day of August 1943, the defendants, Margaret M. Johnson and Mary E. Layton, doing business as the United States Dental Company, and Voyle Clark Johnson, hereinafter referred to as defendants, in the course of the conduct of a business of constructing or supplying dentures from casts or impressions sent through the mails or in Interstate Commerce, did use the United States Mails for the purpose of bringing a set of dentures from the State of Illinois into the State of Delaware, the laws of which state prohibit the taking of impressions or casts of the human mouth by a person not licensed under the laws of the State of Delaware to practice dentistry and likewise prohibits the construction or supply of dentures by a person other than or without the authorization or prescription of a person licensed under the laws of said State to practice dentistry, and also prohibits the construction or supply of dentures from impressions or casts made by a person not licensed under the laws of the State of Delaware to practice dentistry (Revised Code of Delaware, 1935, Chapter 30, Sections 23 and 26) that is to say, the said defendants on the day first aforementioned, did deposit at the Wicker Park Station, a branch of the United States Post Office at Chicago, Illinois, the same being a part of the Post Office Establishment of the United States, Insured Parcel No. 6169824,

6

addressed to Alice Harris, R. F. D. No. 1, Box 20, Houston, Delaware containing a set of dentures which had been made or constructed from an impression taken by a person, viz, the aforementioned Alice Harris, she not being a person licensed under the laws of the State of Delaware to practice dentistry, for the purpose of having the Post Office Establishment of the United States bring the said set of dentures from the State of Illinois to and into the State of Delaware, to wit, to the said Alice Harris, R. F. D. No. 1, Box 20, Houston, Delaware, and within the jurisdiction of this Court; and the said Post Office Establishment of the United States did, in due course of the United States Mails, and pursuant to the directions set forth by the defendants on the aforementioned insured parcel No. 6169824, bring the said Insured Parcel No. 6169824 and its enclosure, i. e., a set of dentures made and constructed as aforesaid, to and into the State of Delaware, to wit, to the said Alice Harris, R. F. D. No. 1, Box 20, Houston, Delaware, and within the jurisdiction of this Court, the said set of dentures so mailed by the defendants as aforesaid not being constructed by or under the authorization of or pursuant to a prescription of a person licensed under the laws of the said State of Delaware to practice dentistry, contrary to the form of the Statute (Act of December 24, 1942, C. 823, Sec. 1, 56 Stat. 1087, Title 18 U. S. C. A., Sec. 420f) in such cases made and provided, and against the peace and dignity of the United States of America.

(s) STEWART LYNCH,
United States Attorney,
District of Delaware.

7 UNITED STATES OF AMERICA,
District of Delaware, ss:

Before me, the undersigned, Clerk of the United States District Court for the District of Delaware, personally appeared Stewart Lynch, United States Attorney for the District of Delaware, and made oath in due form of law that the matters and facts set forth in the foregoing Information are true, to the best of his knowledge, information and belief.

(S) STEWART LYNCH.

Sworn to and subscribed before me this 26th day of January A. D. 1944.

[SEAL OF COURT] (S) T. M. BEAUCHAMP,
Ch. Dep. Clerk, United States District Court,
District of Delaware.

8 In United States District Court

Demurrer, motion to quash, and plea in abatement

Filed Feb. 1, 1944

Now come the defendants, Margaret M. Johnson and Mary E. Layton, doing business as the United States Dental Company, and Voyle Clark Johnson, on petition of H. Albert Young and Alexander Jamison, their attorneys, and demur to the information in the above-entitled cause and move to quash the said information and for a plea in abatement with reference thereto say that the information should be quashed and held for naught and that the United States of America take no further cognizance of nor further prosecute for the matters set forth in said information and that the said defendants ought not to be further held to answer the said information and that the same should abate, and for such grounds respectfully show the Court:

1. That the federal statute under which this information was returned against the defendants herein is vague, uncertain, indefinite, broad and ambiguous and, therefore, invalid.

2. That the information filed herein is vague, ambiguous,
9 indefinite, uncertain and illogical; that the said information is insufficient in law and does not charge a criminal offense.

3. That the state act upon which this prosecution depends is vague, uncertain, indefinite, broad, and ambiguous.

4. That the federal statute under which this information was filed must by its terms find support in a valid statute of the State of Delaware; that the clauses contained in section 23 and section 26 of the Delaware State Law entitled, "An Act to Amend, Revise, and Consolidate the Laws Regulating the Practice of Dentistry, Dental Surgery, and Oral Hygiene in This State * * *", 38 Laws of Delaware 240, Chapter 48, are invalid for the reasons that:

(a) Sec. 26 of the Act does not prohibit nor make unlawful the taking or making of impressions of one's own teeth.

(b) The Act fails to define the meaning of practicing dentistry as embracing within its scope the act of one taking impressions of his own teeth.

(c) The "authority" and "responsibility" conferred upon registered practitioners of dentistry by Sec. 23 of the Act is invalid as being an arbitrary delegation of authority for the reason
10 that such wide and discretionary power leaves to any registered practitioner of dentistry the unbridled authority without control or limitation and without a reasonable standard or adequate yardstick to guide him, to make lawful or unlawful the entry into the channels of interstate commerce purely commercial prod-

acts which would otherwise constitute lawful articles of commerce.

(d) The Act in defining "dental operations" does not include work embraced in the business of mechanical dentistry and thereby demonstrates that the Act never intended to regulate or control the business thereof.

(e) The Act is invalid in that it attempts to regulate the manufacture, sale and supply of dentures which is a purely mechanical art or business in which any person has the right to engage as distinguished from the practice of dental surgery, etc., which is a profession; the former cannot be abrogated by law in the guise of protecting the public interest; in other words, the law cannot
11 interfere with the right of one to lawfully engage in a common and useful occupation for which he is qualified.

(f) The Act is fatal in that the title thereof does not reasonably disclose the intent to regulate the business of the manufacture, sale, and supply of dentures.

(g) The Act is unconstitutional because it lacks completeness and certainty; it leaves the definition, explanation, standards, and final decision concerning the matter about which it purports to legislate, to any licensed registered practitioner of dentistry and is consequently an attempt by the Legislature to make an improper delegation of legislative power in violation of Article II, Section 1, of the constitution of the State of Delaware.

(h) The Act insofar as it fails to define the meaning of "taking impressions for the replacement of teeth" and the meaning of "making it unlawful for any person to repair, construct, adjust, or alter any appliance, denture, or dental restoration except
12 under the authority and responsibility of a registered practitioner of dentistry" by leaving to such registered practitioner of dentistry the absolute power and sole discretion to determine when an individual rightfully engaged in the lawful business of mechanical dentistry becomes amenable to both the state and federal laws is an arbitrary and invalid delegation of authority; and by so doing, leaves to such registered practitioner of dentistry of this State as well as to the State itself the power of determining when an article in question, the manufacture, construction, and supply of which, lawful in themselves, becomes unlawful when shipped in interstate commerce, and is, therefore, in violation of Article II, Section 1, of the constitution of the State of Delaware which provides:

"The legislative power of this State shall be vested in a general assembly which shall consist of a Senate and a House of Representatives."

(i) The repair, construction, adjustment, or altering of any appliance, denture, or dental restoration embracing the
13 mechanical phase of dentistry as distinguished from dental

surgery and treatment of the human mouth is a lawful business and to prohibit one from engaging in such lawful business unless authorized by a registered practitioner of dentistry to do so without any adequate or reasonable standard to guide him or control him in determining the qualifications of one so engaged, is an arbitrary invasion of the personal rights and liberty of a citizen to engage in a lawful occupation and as such is in violation of the Bill of Rights as contained in Article I, Section 7, of the constitution of the State of Delaware and as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

(j) The state Act fails to set up an ascertainable standard of guilt and is, therefore, invalid.

5. The act of congress upon which this information is based is a penal statute and is indefinite and uncertain in that it authorizes any registered practitioner of dentistry in any state or territory without any guide or reasonable standard to determine whether or not the movement of certain articles in interest commerce may be permissible.

14 6. The act of congress upon which this information is based is not within the power of congress to regulate commerce among the several states.

7. The State Act insofar as it attempts to regulate the business of a mechanical dental laboratory is unconstitutional and void as conferring a special privilege, immunity, and franchise upon a special class of citizens and is, therefore, class legislation insofar as it attempts to confer a monopoly upon the dental profession; that in so doing, such legislation deprives the defendants of their property without due process of law as defined in the state and federal constitutions.

8. The state act under consideration being a penal statute, it will not be presumed that the Legislature intended to interfere with the right of one to engage in a common and useful occupation for which he is qualified unless it appears by unequivocal language in the statute itself that such was the intent of the Legislature and then only could such a statute be valid and constitutional if it be a reasonable exercise of the police power.

9. The state act clearly demonstrates the intent on the part of its lawmakers that no one shall practice dentistry as therein defined who is not a licensed registered dentist according to a certificate issued by the Board as evidence of such qualifications. The adequate protection of the public health required no more than that, and beyond that the Legislature did not go; hence, the federal statute is nonoperative and ineffectual.

15 10. That the federal statute is invalid for the reason that it becomes operative only upon the will of state legislatures

thus enabling the several states indirectly to regulate interstate commerce.

11. That the United States District Court for Delaware is without jurisdiction to hear and determine this case.

12. That the United States District Court for Delaware is without jurisdiction to hear and determine this case under count one of the information for the reason that said count does not allege an offense tryable in this district because it fails to show a delivery of the package within this district as an essential element of the offense under which circumstances alone this Court could acquire jurisdiction.

13. Upon information and belief, your petitioners aver that the United States District Court for the District of Delaware is without jurisdiction to hear and determine this case for the reason that none of the defendants has ever at any time been in this district and further because all of the counts of the information allege an offense which if it was committed at all, was committed and wholly completed in the City of Chicago, District of Illinois, since the federal statute under which the information is framed does not make the delivery of the package an essential element of the use of the mails referred to therein.

14. That this court is without jurisdiction to hear and
16 determine this case since the offense was completed in *in* Chicago, Illinois, there being no special venue provisions in the statute under consideration giving the courts of any other district jurisdiction. Jurisdiction cannot be conferred upon this Court merely by alleging a delivery into the State of Delaware for the reason that the act of congress failed to make delivery an essential element of the offense so as to enable this Court to acquire jurisdiction.

15. More allegations showing a delivery into the State of Delaware cannot widen the scope or extend the meaning of the statute so as to confer jurisdiction upon this Court which plainly under the act under consideration it does not now have.

16. That the United States District Court for the District of Delaware is without jurisdiction for the reasons assigned in the previous paragraphs, namely: paragraphs 11, 12, 13, 14, and 15, and for it to assume jurisdiction would be in violation of the constitutional rights as guaranteed them by the Bill of Rights, Article I, Section 7 of the Constitution of the State of Delaware and of the Sixth Amendment of the Constitution of the United States.

Wherefore, for every and all of the foregoing reasons, the defendants respectively pray that the Court quash, set aside and abate the information filed against them herein and that the United

States of America take no further cognizance of or further prosecute for the matter set forth in the information filed herein and that they be permitted to go hence without delay.

(S) H. ALBERT YOUNG,
(S) ALEXANDER JAMISON,
Attorneys for Defendants, Margaret M. Johnson and Mary E. Layton, doing business as the United States Dental Company, and Voyle Clark Johnson.

17 [*Duly sworn to by H. Albert Young and Alexander Jamison; jurat omitted in printing.*]

18 In United States District Court

Order quashing information

Filed Feb. 2, 1944

And now to wit this 2nd day of February A. D. 1944, the above-entitled cause having come on to be heard on February 2, 1943, at 2:00 P. M., upon the Motions to Quash and the Demurrers filed by the Defendants to the Criminal Information filed by the United States charging the Defendants with having violated the Act of December 24, 1942 (Title 18, U. S. C. A., Section 420f), and the United States Attorney and Counsel for the Defendants having been fully heard on oral argument, and the Court having maturely considered the Motions and Demurrers and concluded that the questions presented thereby are the same as presented and passed upon by the Court in Criminal Action No. 296 in which the Court filed its Opinion on January 26, 1944, finding that under the Statute upon which the Information is based prosecution may only be had in the District in which the prohibited matter is deposited in the United States Mails and that the offenses charged in the Criminal Information was completed in Chicago, Illinois in which city the prohibited matter was deposited in the United States Mails and in which Opinion the Court ruled that there are no special provisions in the Statute giving the Court of any other District than that in which the prohibited matter is deposited in the Mails, jurisdiction to prosecute violations of the cited Statute, now on Motion of Counsel for the Defendants and for the reasons expressed by the Court in its Opinion in Criminal Action No. 296, it is

Ordered and adjudged by the Court that the Motions to
19 Quash the Information and Demurrers filed to the Informa-

tion on behalf of the Defendants be and they are hereby granted and sustained and the Information quashed.

(S) PAUL LEAHY,
United States District Judge.

20 In the District Court of the United States for the District of Delaware

Criminal Action No. 296

UNITED STATES OF AMERICA, PLAINTIFF

vs.

MARGARET M. JOHNSON AND MARY E. LAYTON, DOING BUSINESS AS THE UNITED STATES DENTAL COMPANY, AND VOYLE CLARK JOHNSON, DEFENDANTS

Stewart Lynch, U. S. atty., of Wilmington, Delaware, for the United States.

H. Albert Young and Alexander Jamison, both of Wilmington, Delaware, for defendants.

Opinion

Filed Jan. 26, 1944

(S) LEAHY.

LEAHY, District Judge.

This matter is here on motions to quash and demurrers to an information charging defendants with violation of an Act of Congress, 56 Stat. 1087, approved December 24, 1942 (Title 18 U. S. C. A. § 420f). The pertinent provisions of the Act provide: "That it shall be unlawful, in the course of the conduct of a business of constructing or supplying dentures from casts or impressions sent through the mails * * * to use the mails * * * for the purpose of sending or bringing into any State or Territory the laws of which prohibit—* * *

"(2) the construction or supply of dentures by a person other than, or without the authorization or prescription of, a person licensed under the laws of such State or Territory to practice dentistry; or,

"(3) the construction or supply of dentures from impressions or casts made by a person not licensed under the laws of such State or Territory to practice dentistry, any denture con-

21 structed from any cast or impressions made by any person other than, or without the authorization or prescription of, a person licensed under the laws of the State or Territory into

which such denture is sent or brought to practice dentistry." The Act contains definitions and penalties.

The information alleges violation of the statute in that on August 25, 1943, defendants, while engaged in the course of conducting a business of constructing or supplying dentures from casts or impressions to be sent through the mails or in interstate commerce, "did use the United States mails for the purpose of sending a set of dentures from the State of Illinois into the State of Delaware, * * *." However, it is essential to note that there is no allegation that the dentures were, in fact, received or delivered in the State of Delaware.

The information then allegs that the laws of Delaware "prohibit the taking of impressions or casts of the human mouth by a person not licensed under the [Delaware] laws to practice dentistry and likewise prohibits the construction or supply of dentures by a person other than and without the authorization or prescription of a person licensed under the [Delaware] laws * * *. to practice dentistry and also prohibits the construction or supply of dentures from impressions or casts made by a person not licensed under the [Delaware] laws * * * to practice dentistry * * *." The information continues by charging that the dentures mailed by the defendants in Illinois to be sent into Delaware were not "constructed by or under the authorization of or pursuant to a prescription of a person licensed under the laws of the State of Delaware to practice dentistry * * *." This is the initial appearance of the federal statute before a federal court.

Defendants attack the information on several grounds: (1) the court of this district does not have jurisdiction; (2) the form of the Delaware statutes is such that they are not integrated or covered by the federal provisions; and (3) if they are covered the state and federal statutes are unconstitutional. I shall discuss
22 merely the question of jurisdiction for my holding in regard to it will be dispositive of the matter now before me.

Defendants contend that unlawful use of the mails under this statute can be prosecuted only in the district in which the prohibited matter was deposited in the mails. I think this position sound. The significant words of the statute are "to use the mails * * * for the purpose of sending or bringing into any State * * *." That which the statute condemns, therefore, is the use of the mails for the purpose of sending or bringing prohibited matter into the State. It is well established—with minor exceptions, none of which apply here—that for most crimes an act and intent are essential. The crime defined in that statute sub judice requires these elements. Obviously, both of these operative facts occurred in Chicago—the place where the package was mailed with the purpose of sending or bringing it into Delaware.

In short, there was a completed criminal offense at the moment of mailing because use plus purpose of sending or bringing into any State is what the statute prohibits. It is not an essential prerequisite to a valid conviction that the purpose or intent be, in fact, effectuated. Since the crime was complete at the place of sending, with the purpose mentioned, the government's contention bottomed on Section 42 of the Judicial Code[1] (28 U. S. C. A. § 103) and cases decided under it is wide of the mark. The typical cases under Section 42 are those involving, for the most part, the crime of conspiracy. A conspirator may be prosecuted either where the conspiracy is formed or where the overt act is committed. Grigg v. Bolton, 9 cir., 53 F. 2d 158; United States v. Jordan, D. C., 22 F. 2d 702. In such situations the statute, in order to prevent a failure of justice, has made the offense
23 punishable in either district as if it had been wholly committed therein. The statute was required to take this form in order to conform to the Sixth Amendment to the Constitution which guarantees to an accused the right to jury trial in "the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law." It is necessary to distinguish carefully situations where an offense was committed in both districts or where it was completed in the second district. See in re Pallister, 136 U. S. 257; United States v. Freeman, 239 U. S. 117. Manifestly, such cases are inappropriate here where the offense was completed at the district of mailing, and where the statute invoked does not create an offense in a second or other district.

The meaning of the language of the statute is plain; and in the absence of a special venue provision the alleged offense must be prosecuted in the district where the crime was actually and wholly committed. It is true, of course, that if Congress intended to use the words of the statute in other than their ordinary meaning, the court will accept the Congressional dictionary meaning of the words. This is in accord with Boston Sand Co. v. United States, 278 U. S. 41. There the Supreme Court said: "* * * when the meaning of language is plain we are not to resort to evidence in order to raise doubts. That is rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists. If Congress has been accustomed to use a certain phrase with a more limited meaning than might be attributed to it by common practice, it would be arbitrary to refuse to

[1] The statute provides that "When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein." In this case, the offense was actually and wholly committed in Chicago, Illinois, so this statute is manifestly inapplicable.

consider that fact when we come to interpret a statute." With respect to the present statute, however, there is, indeed, much persuasive evidence that Congress intended the words of the statute to have their ordinary meaning. Legislative history
24 supports the conclusion reached here. The Postmaster General, for example, expressed the opinion [2] that the statute does not provide for prosecution of violators in the jurisdiction where the material is caused to be delivered. H. R. 5674, 77th Cong., 1st sess., is referred to in the Congressional Record as of September 17, 1941. It contains the statute which was before the Postmaster General and which he suggested should be rewritten so as to contain a venue provision. Three months later, when the Subcommittee of the House commenced its hearings on February 3, 1942, the statute in the form in which it appears in H. R. 5674 and in its present form as enacted, was introduced before the Subcommittee, together with the recommendation of the Postmaster General. See Hearing of Subcommittee on H. R. 5674, pp. 1–3. Likewise, the Subcommittee of the Senate commenced its hearings on July 15, 1942, and it had the identical statute before it. See Hearings before Subcommittee on S. 2371, p. 1–2. A diligent reading of the reports of the hearings before both branches of Congress fails to disclose that the Postmaster General's suggestion was either considered or acted upon. This is significant, for I do not think that Congress should be presumed to have intended that the statute should have a meaning at war with the interpretation of the governmental department charged with its
25 administration. This precludes, I think, a holding that Congress used the words of the statute in other than their plain and ordinary meaning.

Moreover, if Congress had intended that violators could be prosecuted in the district in which the articles were delivered it could easily have said so as it had done in several prior instances. Sec. 20 (b) (15 U. S. C. A. § 77 (b)) of the Securities and Exchange Act, for example, in dealing with transmission of a prospectus

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[2] See following footnote:

OFFICE OF THE POSTMASTER GENERAL,
Washington, D. C., November 5, 1941.

Hon. CLARENCE F. LEA,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives,

MY DEAR MR. LEA: Your letter of September 18, 1941, requested a report upon H. R. 5674, a bill to protect the public health by the prevention of certain practices leading to dental disorders; and to prevent the circumvention of certain State laws regulating the practice of dentistry.

This Department has no objection to the enactment of this proposed legislation. *However, it is believed that consideration should be given to the advisability of having the measure provide for prosecution of violators in the jurisdiction where the material is caused to be delivered as well as in the jurisdiction from which it is sent.*

It has been ascertained from the Bureau of the Budget that this report is in accord with the program of the President.

Very truly yours,

FRANK C. WALKER,
Postmaster General.

or a security provides that: "Any such criminal proceeding may be brought either in the district wherein the transmittal of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received." I shall not pause to discuss the fundamental rule of strict construction of criminal statutes as an additional support to defendants' contention. See Prussion v. U. S., 282 U. S. 675; U. S. v. Resnick, 299 U. S. 207.

Finally, the government in drafting the present information adopted what defendants argue is the correct interpretation of the statute. The information charges that defendants "did use the United States mails for the purpose of sending a set of dentures from the State of Illinois into the State of Delaware * * *." There is no allegation that the dentures were actually received or delivered in the State of Delaware. It may fairly be said, therefore, that the information accepts the correctness of defendants' contention, for if the government were right in its interpretation it would have alleged that the dentures were received or delivered within this district. This it has failed to do. The internal evidence indicates, then, that the draftsman of the information subconsciously interpreted the statute as I have.

Since the offenses were completed in Chicago, Illinois, and since there are no special venue provisions in the statute giving the courts of any other district jurisdiction, I hold that the defendants' motions should be granted and the demurrers sustained. Since this ruling is dispositive of the present matter, I shall not consider any of the other interesting Constitutional questions raised by defendants.

Dated January 25, 1944.

26 In United States District Court

Petition for appeal

Filed March 3, 1944

Comes now the United States of America, plaintiff herein, and states that on the 2nd day of February 1944, the District Court of the United States for the District of Delaware entered a judgment and order sustaining motions to quash and demurrers to the information herein, and quashing the said information, and that the United States of America, feeling aggrieved at the ruling of the District Court sustaining the said motions and demurrers and quashing the said information, prays that it may be allowed an appeal to the Supreme Court of the United States for a reversal of said judgment and order, and that a transcript of the record

in this cause, duly authenticated, may be sent to the Supreme Court of the United State

Petitioner submits and presents to the court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause.

UNITED STATES OF AMERICA.
(S) STEWART LYNCH,
United States Attorney,
District of Delaware.

41 In United States District Court

Assignment of errors

Filed March 3, 1944

Comes now the United States of America, by Stewart Lynch, United States Attorney for the District of Delaware, and avers that in the record proceedings and judgment and order herein there is manifest error and against the just rights of the said plaintiff, the United States of America, in this, to wit:

1. That the court erred in sustaining the demurrers to the information.

2. That the court erred in sustaining the motions to quash the information.

3. That the court erred in quashing the information.

4. That the court erred in holding that a violation, by the use of the United States mails, of the so-called Denture Act (Act of December 24, 1942, c. 823, 56 Stat. 1087; 18 U. S. C. 420f) can occur only in the federal district in which the proscribed matter is deposited in the mails.

5. That the court erred in holding that a violation of the act is not committed in the federal district into which proscribed matter is delivered where it has been deposited in the mails in another federal district.

6. That the court erred in holding that a violation of the act, by the use of the mails, may be prosecuted only in the
42 federal district in which the proscribed matter is deposited in the mails.

7. That the court erred in holding that a violation of the act, by the use of the mails, may not be prosecuted in the federal district into which the proscribed matter is delivered, or into which

it is directed for delivery, where it has been deposited in the mails in another federal district.

(S) STEWART LYNCH,
United States Attorney,
District of Delaware.

43 In United States District Court

Order allowing appeal to the Supreme Court of the United States

Filed March 3, 1944

This cause having come on this day before the Court on petition of the United States of America, plaintiff herein, praying an appeal to the Supreme Court of the United States for reversal of the judgment and order in the cause sustaining the defendants' motions to quash and demurrers to the information therein and quashing the said information, and that a duly certified copy of the record in said cause be transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered said petition, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the Clerk of the Court, it is, therefore, by the Court ordered and adjudged, that the plaintiff herein, the United States of America, be, and it is hereby, allowed an appeal from the order and judgment of this Court sustaining the defendants' motions to quash and demurrers to the information and quashing the said information, to the Supreme Court of the United States, and that a duly certified copy of the record in said cause be transmitted to the Clerk of the Supreme Court.

44 It is further ordered, that the United States of America be, and it is hereby, permitted a period of forty days in which to file and docket the said appeal in the Supreme Court of the United States.

Dated at Wilmington, Delaware, this 3rd day of March 1944.

By the Court:

(S) PAUL LEAHY,
United States District Judge,
District of Delaware.

46 [Citation in usual form showing service on H. Albert Young and Alex Jamison, filed March 3, 1944, omitted in printing.]

47 In United States District Court

Praecipe for transcript of record

Filed March 3, 1944

To the Clerk, District Court of the United States for the District of Delaware:

The appellant, the United States of America, hereby directs that in preparing the transcript of the record in this cause in the District Court of the United States for the District of Delaware, you include the following:

1. Docket entries and minute entries showing filing of the information, filing of motions to quash and demurrers thereto, entry of order sustaining motions to quash and demurrers to the information and quashing the same, and filing of memorandum opinion of Judge Leahy, dated January 26, 1944, rendered on motions to quash and demurrers to the information in Criminal Action No. 296.
2. Information.
3. Demurrers and motions to quash the information.
4. Order sustaining demurrers and motions to quash the information, and quashing the same.
5. Memorandum opinion of Judge Leahy, dated January 26, 1944, rendered on motions to quash and demurrers to the information in Criminal Action No. 296.

48 6. Petition for appeal to the Supreme Court.
7. Statement as to the jurisdiction of the Supreme Court.
8. Assignment of errors.
9. Order allowing appeal.
10. Notice of service on appellees of petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction.
11. Citation.
12. Praecipe.

(S) STEWART LYNCH.
United States Attorney,
District of Delaware.

Service of the foregoing Praecipe for Transcript of Record is acknowledged this 3rd day of March 1944.

(S) H. ALBERT YOUNG.
(S) ALEX JAMISON.
Counsel for Appellees.

49 [Clerk's certificate to foregoing transcript omitted in printing.]

50 In the Supreme Court of the United States

Statement of points to be relied on and designation of record

Filed March 30, 1944

Pursuant to Rule XIII, paragraph 9 of this Court, appellant states that it intends to rely upon all of the points in its assignments of error.

Appellant deems the entire record, as filed in the above-entitled cause, necessary for the consideration of the points relied upon.

CHARLES FAHY,
Solicitor General.

Service of the above Statement of Points and Designation of Record acknowledged this 28th day of March 1944.

H. ALBERT YOUNG,
ALEXANDER JAMISON,
Counsel for Appellees.

[File endorsement omitted.]

51 Supreme Court of the United States

Order noting probable jurisdiction

April 10, 1944

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

[Endorsement on cover:] File No. 48304. Delaware, D. C. U. S. Term No. 811. The United States of America, Appellant vs. Margaret M. Johnson and Mary E. Layton, Doing business as the United States Dental Company, and Voyle Clark Johnson. Filed March 23, 1944. Term No. 811 O. T. 1943.

U. S. GOVERNMENT PRINTING OFFICE 1944